

ALBERT H. CORLISS

IBLA 88-454

Decided April 7, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claim (CA MC 136988) abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Under 43 U.S.C. | 1744(a) (1982), as implemented by the provisions of 43 CFR 3833.2-3, the mining claim recordation document filed with the Bureau of Land Management by a mining claimant as a notice of intention to hold the claim must be "an exact legible reproduction or duplicate, except microfilm, of an instrument" which was or will be filed for record with the local recording district. There is no evidence in this case that the documents cited by claimant as notice of intention to hold constitute copies of documents he had filed or intended to file with the local recording district.

APPEARANCES: Albert H. Corliss, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Albert H. Corliss appeals from a May 3, 1988, decision of the California State Office, Bureau of Land Management (BLM), declaring the Isis Mining placer mining claim (CA MC 136988) abandoned and void for failure to make an annual filing of evidence of assessment work performed or notice of intention to hold the claim with BLM, statutory filing requirements mandated by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982). In this case, BLM held no such filing was achieved for the filing period ending December 30, 1987.

In his statement of reasons on appeal, appellant contends that two documents filed by him in 1987, a letter notifying BLM of a change of address and requesting information on the claim and its validity, and a document appellant described as a "Confirmation of Relocation Certificate,"

evidenced his desire or intent to hold the claim. He argues that the documents taken together fulfill BLM's requirement for a Notice of Intent.

[1] Section 314 of FLPMA, 43 U.S.C. | 1744 (1982), and 43 CFR 3833.2-1, require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to properly file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4.

Section 314 of FLPMA does not specify the form and contents of either an affidavit of assessment work or a notice of intention to hold to be filed with BLM, except to say that the owner of the claim should file "a copy of the official record of the instrument filed or recorded [with the local recording office]." 43 U.S.C. | 1744(a) (1982). However, Departmental regulations set forth the acceptable form and contents of the required documents. In the case of a notice of intention to hold a claim, 43 CFR 3833.2-3 states that it should be in the form of either "an exact legible reproduction or duplicate, except microfilm, of an instrument, signed by the owner of the claim or his/her agent, which was or will be filed for record [with the local recording district]," reference to a decision on file with BLM granting a deferment of annual assessment work, or reference to a pending petition for deferment filed with the proper BLM office.

There is nothing in the record which would lead us to believe appellant's letters to BLM are copies of documents he had filed or intended to file with the local recording office. Therefore, those documents cannot be considered "a notice of intention to hold the claims," as defined by either the applicable statute or Departmental regulation. See John Robert Maytag, 95 IBLA 128 (1987); Add-Ventures, Ltd., 95 IBLA 44, 49 (1986). Further, "while the documents 'evidence a continued interest in the claims,' Red Top Mercury Mines, Inc., 96 IBLA 391, 395 (1987), these letters do not meet the filing requirement of 43 U.S.C. | 1744(a)(1) as a notice of intention to hold." Red Top Mercury Mines, Inc. v. United States, Civ. No. 87-326 (D. Alaska, Sept. 19, 1988 (slip op. at 17)).

Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. Congress mandated that failure to file the proper documents within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. The Supreme Court has held that those claims for which timely filings are not made are extinguished by operation of law regardless of the claimant's subjective intent to hold the claim or BLM's awareness of that intent. See United States v. Locke, 471 U.S. 84 (1985).

The Department has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981). As appellant has not submitted evidence that the required filings were received

by BLM within the period allowed for filing, the subject mining claim is properly deemed to be abandoned and void. See Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983)

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

R. W. Mullen
Administrative Judge